



March 6, 2002

Ms. Ingrid K. Hansen  
Managing Director  
Legal Services Division  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

OR2002-1091

Dear Ms. Hansen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159582.

The Texas General Land Office (the "land office") received a request for "[d]ocuments related to all contracts or transactions between the [land office] and Enron Corp. and/or its subsidiaries, such as Enron North America Corp." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>1</sup>

You contend that the request encompasses information related to the land office's audit of Enron, which is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," which includes information made confidential by other statutes. Section 52.140 of the Natural Resources Code provides in relevant part:

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<sup>1</sup>We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in section 52.135 of this code, is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

....

(d) This section does not prohibit:

- (1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;
- (2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;
- (3) the release of information which is otherwise available to the public; or
- (4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 52.135 of this code or the release of other information which would have been properly included in reports required under Section 52.131 of this code.

Nat. Res. Code § 52.140(a), (d).

You advise that all of the submitted information has been secured, derived from, and obtained during an audit of Enron pursuant to section 52.135 of the Natural Resources Code. Based on your arguments and our review of the information, we conclude that most of the requested information is confidential under section 552.101 of the Government Code in conjunction with section 52.140(a) of the Natural Resources Code. However, some of the requested information was not secured, derived or obtained from Enron's records. Thus, the land office may not withhold this information under section 552.101. In addition, the land office must release the information specified in subsection (d)(4) of section 52.140, namely the amount of royalty assessed as a result of an audit under section 52.135 and information included in reports required under section 52.131.

We now address your claim under section 552.107 for the attorney's notes that you have marked. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that

section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990).

You state that the notes contained in the audit records detail conversations between land office auditors and certain attorneys employed in the land office's legal division regarding legal issues. We conclude that the submitted attorney's notes are covered by the attorney-client privilege, and are therefore excepted from disclosure under section 552.107(1).

In summary, you must withhold most of the requested information under section 552.101 of the Government Code in conjunction with section 52.140 of the Natural Resources Code. You may withhold the information you have marked under section 552.107 of the Government Code. The remaining information, which we have marked, must be released. You must also release the information specified in section 52.140(d)(4) of the Natural Resources Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 159582

Enc. Submitted documents

c: Ms. Claudia Grisales  
Austin American-Statesman  
P.O. Box 670  
Austin, Texas 78767  
(w/o enclosures)